

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LUIS FABELO-PLASENCIA,

Plaintiff,

v.

ORDER

DR. TONY CARNEVALE, et al.,

Civil No. 06-1426-AC

Defendants.

HAGGERTY, Chief Judge:

Magistrate Judge Acosta referred to this court a Findings and Recommendation [147] and a Supplemental Findings and Recommendation [157] in this matter. Judge Acosta recommends that defendants' Motion to Dismiss [123] be granted with regard to all claims and plaintiff's Motion for Summary Judgment [52] be denied. Plaintiff, acting *pro se*, filed timely objections to the Findings and Recommendation, but failed to object to the Supplemental Findings and Recommendation. The Ninth Circuit upholds a "policy of liberal construction in favor of *pro se*

litigants." *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998). Because plaintiff is proceeding *pro se*, this court construes his objections to the Findings and Recommendation as applying to the Supplemental Findings and Recommendation as well. For the following reasons, this court adopts both the Findings and Recommendation and the Supplemental Findings and Recommendation.

STANDARDS

When a party objects to any portion of a Findings and Recommendation, the district court must conduct a *de novo* review. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

BACKGROUND

The Findings and Recommendation contains a detailed factual summary outlining the history of this matter, and the facts will not be fully repeated here. Plaintiff is in the custody of the Oregon Department of Corrections (Department). Plaintiff asserts claims against prison officials and health care providers for treatment he has received while in the custody of the Department. These claims include allegations that he was forced to participate in nuclear radiation treatment for his thyroid condition, forced or tricked into signing legal papers, forced to take "psychotropic" drugs, denied medications, and improperly placed in the Special Management and Intensive Management Units. Plaintiff filed numerous grievances with the Department, which he alleges were disregarded or ignored. Plaintiff's claims assert violations of his civil rights under 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Eighth and Fourteenth Amendments of the Constitution. *Id.*

DISCUSSION

The Findings and Recommendation found that petitioner did not exhaust his administrative remedies with respect to his claims and recommended granting defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b). Plaintiff provided little in the way of substantive objections. He objects to certain factual findings and argues that the Findings and Recommendation's conclusions are not "drawn by way of reasonable inferences from the evidence." Obj. to Findings and Recommendation at 1. These objections rely upon prior briefings and exhibits submitted by plaintiff in this matter.

This court has reviewed the entire record and has conducted a *de novo* review of both the Findings and Recommendation, and the Supplemental Findings and Recommendation. The Findings and Recommendation and its supplement are well reasoned and without error. This court adopts both in their entirety.

CONCLUSION

For the foregoing reasons, the court adopts the Findings and Recommendation [54] and the Supplemental Findings and Recommendation [157]. Defendants' Motion to Dismiss [123] is granted and Luis Fabelo-Plasencia's Motion for Summary Judgment [52] is denied. Plaintiff's claims are dismissed with prejudice.

IT IS SO ORDERED.

DATED this 24 day of November, 2008.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge